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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re C.L., a Person Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.E.,

Defendant and Appellant.

C061822

(Super. Ct. No. JD228725)

Appellant M.E., mother of C.L. (the minor), appeals from an order of the juvenile court finding the minor to be a person within the meaning of Welfare and Institutions Code section 300, and removing the minor from appellant's physical custody. (Welf. & Inst. Code, §§ 300, 361.1; further section references are to this code.)

Appellant contends there was insufficient evidence to support the juvenile court's finding that the minor came within the provisions of section 300, subdivision (b), and there was

insufficient evidence to support the removal order. We affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2008, appellant gave birth to a baby girl, who was promptly given up for adoption. Children's Protective Services (CPS) was informed that appellant had tested positive for methamphetamine in a prenatal drug test on March 28, 2008, and tested positive for methamphetamine again on August 17, 2008, just days after giving birth.

Concerned for the safety and welfare of the other children living with appellant, including the 13-month-old minor, CPS dispatched a social worker on September 18, 2008, to talk with appellant regarding her drug use. Appellant denied having used drugs since February 2008, but agreed to submit to drug testing. She informed the social worker that the minor's father had been deported back to Mexico in April 2008 due to domestic violence.

Appellant tested positive for methamphetamine on September 19, 2008.

On October 14, 2008, the social worker advised appellant that, due to her positive drug test results, she would have to begin drug testing three times per week and would have to participate in family maintenance services, including an alcohol and/or other drug (AOD) assessment, parenting classes and possibly drug treatment. Appellant stated she "did not know how the drugs got into her system."

Social workers met with appellant at her home on November 4, 2008. Appellant signed the informal supervision

case plan and stated her last methamphetamine use was in December 2007.

Appellant tested positive for methamphetamine on November 5 and November 7, 2008.

On November 7, 2008, appellant left five voicemail messages for the social worker stating that she would not be participating in the AOD assessment as previously agreed. Social workers conducted a home visit, but appellant was not home. They left a card informing appellant that the assessment was scheduled for November 10, 2008.

On November 7, 2008, appellant's neighbor heard screaming coming from appellant's house. According to the neighbor, appellant was sitting on the sidewalk outside the house when the father grabbed her around the waist and tried to drag her back inside. The father picked appellant up and carried her into the house, after which the neighbor could hear more screaming. Appellant then walked out of the house and across the street, holding a baby in her arms. The father tried to pull her into the house by her arm. When he gave up and went back inside the house, appellant walked over to the neighbor's house and asked if she could use a telephone. She dialed a number but no one answered, so she walked back over to her house. The neighbor called the police.¹

¹ The record reveals a prior incident of domestic violence on March 5, 2008, when, during an argument, the father slapped appellant twice across her face and then ripped the telephone cord out of the wall to prevent her from calling for help.

On November 10, 2008, an early intervention specialist met with appellant to conduct an AOD assessment. Appellant was argumentative and uncooperative. She stated she started using methamphetamine when she was 17 years old and last smoked it in September 2008, noting that it "'numbs me.'" She said she was using every weekend two years prior, but then stopped when she became pregnant. However, she relapsed and began using two to three days per week after giving birth in August 2008. She stopped again in September 2008. The social worker assessed appellant as a substance abuser and referred her to several programs, including 12-step support group meetings at least three times per week and early intervention family drug court.

Appellant tested positive for methamphetamine on November 14, 2008. A social worker went to appellant's home and explained the minor's need for protection due to appellant's drug use. The minor was well dressed and "look[ed] good," and appellant's home was "well kept with no safety hazards observed." However, appellant's speech was "rapid and pressured." Appellant stated she did not think services were necessary, but agreed to participate nonetheless. The minor was placed temporarily with the maternal grandmother, who was instructed to keep the minor separated from appellant.

On November 18, 2008, the social worker interviewed the maternal grandmother and learned that appellant and the maternal

The father was ultimately deported back to Mexico as a result of the incident, but later returned to the United States and reunited with appellant.

grandmother had turned the minor over to the paternal aunt so that the minor could accompany the aunt to Mexico to visit the father. Appellant called during the interview and explained that another social worker had already authorized the trip. When pressed on the issue of prior authorization, appellant became "hysterical," telling the social worker she had been given an eviction notice and would soon be homeless. The social worker returned to the office and confirmed that appellant had not, in fact, been given authorization to send the minor to Mexico. She immediately tried to reach appellant by telephone to discuss the matter; however, her attempts were unsuccessful. The social worker concluded that the minor was at substantial risk of physical harm, abuse and/or neglect due to appellant's substance abuse problem and failure to engage and participate in alcohol or drug treatment, and due to the fact that appellant allowed the minor to be taken to Mexico.

On November 25, 2008, the Sacramento County Department of Health and Human Services (the Department) filed a dependency petition² alleging failure to protect the minor due to appellant's substance abuse problem and her failure and/or refusal to rehabilitate.

At the initial hearing on December 2, 2008, neither appellant nor the father was present. The court ordered the minor detained.

² The original petition was superseded by an amended petition filed on March 13, 2009.

On January 5, 2009, the social worker spoke with appellant by telephone regarding the upcoming prejurisdictional hearing. Appellant stated she "was under the impression that the case had been closed as she has sent the [minor] to live with the father in Guadalajara Mexico."

On January 7, 2009, the social worker spoke again with appellant by telephone and determined appellant was likely under the influence of drugs.

As of January 8, 2009, the date scheduled for the prejurisdictional hearing, the Department had yet to ascertain the minor's whereabouts. The hearing was continued to allow preparation of a report setting forth the Department's efforts to locate the minor.

On January 13, 2009, the social worker learned from a representative of the adoption agency handling the adoption of the minor's sibling born in August 2008 that the minor was in appellant's custody and had not, in fact, gone to Mexico. The minor was immediately removed from appellant's home and placed into protective custody.

A social worker interviewed appellant on January 16, 2009, regarding the allegations in the petition. Appellant denied using methamphetamine and explained that she tested positive on November 7, 2008, because she was taking Benadryl, Tylenol PM, Claritin and Vicodin. She stated she tested positive on November 14, 2008, because she was using nasal spray for a sinus infection. Appellant admitted she lied to social workers about sending the minor to Mexico because "she felt threatened."

At the initial hearing on January 16, 2009, the court authorized continued emergency detention of the minor pending further hearing.

At the detention hearing on January 21, 2009, the court found there was substantial danger to the physical health of the minor and no reasonable means to protect the minor without removal from appellant's custody, and ordered continued detention of the minor.

The early intervention specialist met with appellant on January 30, 2009, for a scheduled AOD assessment. Appellant was assessed as a substance abuser and referred to various programs for diagnosis, testing, treatment and support.

On February 2, 2009, appellant tested negative for all substances. However, on February 9, 2009, she was only able to produce a small amount of urine, which was presumptive positive for methamphetamine. When given the option to drink water to produce more urine or accept a failure to test, appellant elected to accept a failure to test, resulting in a presumptive positive test result. The same thing happened again the following day, and appellant again elected to accept a failure to test, resulting in another presumptive positive test result.

The February 2009 jurisdiction/disposition report authored by social worker Sarah Taylor stated appellant "has recently begun to participate in services but seems to be in denial of the level of her substance abuse problem." Neither appellant nor the father had participated in any services to address the issue of domestic violence. The report noted the minor "would

be at high risk of abuse or neglect if returned to the parents' care," but that "counseling, parenting education, domestic violence services and substance abuse treatment for [appellant] would reduce this risk." Taylor recommended that the minor be continued in out-of-home placement.

An amended dependency petition was filed on March 13, 2009. The amended petition included new allegations regarding the recent presumptive positive tests produced by appellant, as well as an allegation under section 300, subdivision (b), regarding the two domestic violence incidents between appellant and the father. The court set the matter for a contested jurisdictional/dispositional hearing.

The contested hearing commenced on April 16, 2009. Appellant called Taylor to testify. Taylor stated the minor was at risk of abuse or neglect if returned to appellant due to "[appellant's] previous history of hiding the [minor] from the Department" and "untreated substance abuse and domestic violence between the parents that I don't believe either parent has addressed." When asked how hiding the minor from the Department placed the minor at risk, Taylor explained that there is a risk that appellant would "flee and continue . . . her substance abuse issue[,] which is a risk to the [minor]." When asked to give an example of how appellant's substance abuse placed the minor at risk, Taylor responded, "I think [appellant's] erratic behaviors would only be increased by her substance abuse. The father reported that [appellant] was outside during one of their domestic violence incidents and was

behaving irrationally while holding the [minor].” On cross-examination, Taylor stated there was a risk that appellant would abscond with the minor and prevent the Department from checking on the minor’s well-being, and that appellant would refuse to participate in court-ordered services, noting that appellant had some presumptive positive tests and more than one failure to test with STARS, and was discharged from STARS for refusing to participate. In Taylor’s opinion, the minor was also at risk of appellant returning to her previous violent relationship with the father. Taylor opined further that the minor would be at risk if appellant knowingly used drugs during pregnancy (as she had with the baby born in August 2008) because that conduct demonstrates that appellant gives substance abuse a higher priority than the safety and well-being of herself, the unborn baby and the minor. Taylor also testified that substance abuse impairs a person’s judgment, and that impaired judgment poses a risk to the minor. She added that there is additional risk to the minor because appellant is in denial about her substance abuse problem and people in denial generally continue to abuse substances.

Appellant also testified at the hearing. She stated she lied to the social worker about sending the minor to Mexico because the social worker was threatening to take the minor from her. Appellant stated she last used illegal substances in November 2008. She also admitted that her drug use put the minor at risk.

Social worker Jenny Garcia testified that, other than drug testing, appellant was not participating in any of the components of her case plan.

The court sustained the allegations in the amended petition based on appellant's admitted history of drug abuse, her recent use of illegal substances, and her admission that she uses methamphetamine to numb herself, placing the minor at risk. The court adjudged the minor a dependent child of the court (§ 300, subd. (b)), removed her from the custody of both parents and committed her to the care and custody of the Department. The court ordered that services be provided to appellant, and further ordered appellant to participate in counseling and dependency drug court.

Appellant filed a timely notice of appeal.

DISCUSSION

I

Appellant contends the Department failed to prove by a preponderance of the evidence that the minor suffered, or was at substantial risk of suffering, serious harm pursuant to section 300, subdivision (b). We disagree.

Subdivision (b) of section 300 provides for jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the

child with adequate food, clothing, shelter, or medical treatment” (§ 300, subd. (b).)

The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court’s jurisdiction. (§ 355.) We review the juvenile court’s order for substantial evidence (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820), resolving conflicts in the evidence in favor of the juvenile court’s decision (*In re Katrina L.* (1988) 200 Cal.App.3d 1288, 1297). We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) Issues of fact and credibility are matters for the trial court alone; we may decide only ““whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.” [Citation.]’” (*In re Heather P.* (1988) 203 Cal.App.3d 1214, 1226-1227, quoting *In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1132.)

Jurisdiction may be upheld if the evidence supports one of several grounds on which the juvenile court relied, even though the evidence may be insufficient to support all of the grounds relied on by the court. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) Appellant has the burden of proving the evidence was insufficient to sustain the juvenile court’s findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The juvenile court here found there was substantial risk of harm to the minor on several grounds: appellant's admitted history of drug abuse, her recent use of illegal substances, and her admission that she uses methamphetamine to numb herself. Substantial evidence supports each one.

Appellant admitted she has used methamphetamine and other illegal substances since the age of 17. She admitted further that she used methamphetamine to numb herself, testifying that she took it to escape her problems and that it helped her "not to be so emotional." She also admitted that her drug use put the minor at risk.

The record also shows that, as of February 2009, appellant was still testing positive for methamphetamine and, more importantly, that she was "in denial of the level of her substance abuse problem." As evidence of that denial, appellant testified she had never tested positive during a prenatal visit with any of her children, despite evidence in the record that she tested positive for methamphetamine in March 2008 while pregnant with the minor's younger sibling. Appellant also testified that she was no longer drug testing with STARS "[b]ecause of the conflict that we had regarding the testing and my medical condition, that they weren't understanding to my condition," and "because they lied on the report." The record, however, shows she was terminated from STARS for refusing to participate.

Appellant argues there "is no presumption that parental drug use alone always creates a substantial risk of physical

harm to a child," and there is no evidence that her drug use or the instances of domestic violence in the home resulted in, or will result in, harm to the minor. Her own admission to the contrary belies that claim, as does the social worker's testimony that appellant's drug use not only impairs her judgment, but also raises the risk that she will abscond with the minor, refuse to participate in court-ordered services, return to her previous violent relationship with the father, and place a higher priority on the drugs than on the safety and well-being of herself and the minor.

The jurisdictional finding is supported by substantial evidence.

II

Appellant contends the removal order is not supported by sufficient evidence of substantial danger to the minor's safety and welfare if returned to appellant's care. Again, we disagree.

Section 361, subdivision (c)(1), provides in relevant part: "A dependent child may not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence . . . [¶] [that t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." We review the juvenile court's determination in this regard under

the substantial evidence test. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.)

Substantial evidence supports the court's removal order. Appellant has a long history of substance abuse. She produced two presumptive positive tests just two months prior to the disposition hearing and, when given the opportunity to provide more urine or accept a failed test, appellant twice elected to accept a failed test. She continues to minimize the seriousness of her substance abuse problem. Despite the fact that she admits using drugs to numb her and avoid her problems, she has only minimally participated in services to address those problems, and has not participated at all in individual counseling because she is "scared."

While appellant urges that there are other children living in the home who are doing just fine, she ignores the fact that she has not yet acknowledged the extent of her problem with drugs or taken sufficient steps to address that problem. In addition, she is actively seeking to reestablish her relationship with the minor's father without undertaking any efforts to address the domestic violence that has plagued the relationship in the recent past.

Evidence of appellant's recent substance abuse, her denial of the seriousness of that affliction, and the fact that the issue of domestic violence in the home has not been addressed by

either appellant or the father is sufficient to support the court's removal order.

DISPOSITION

The juvenile court's order is affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

ROBIE, J.